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EXAMINER
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AUGHENBAUGH, WALTER

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PAPER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/033,457  
Filing Date: December 27, 2001  
Appellant(s): SMITH ET AL.

**MAILED**  
**NOV 19 2007**  
**GROUP 1700**

Andrew J. Anderson  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed August 17, 2007 appealing from the Office action mailed August 8, 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: the ground of rejection identified in Appellant's Ground of Rejection "1 (b.)" (bottom of page 3 of Brief) would be better characterized as "Whether claims 1, 21, and 42... with regards to the recitation "CIELAB value"": Appellant, at the bottom of page 3 of Brief, refers to the recitation "wherein the change in  $b^*$  is less than or equal to 0.2" as the recitation at issue in Appellant's Ground of Rejection "1 (b.)", but the recitation that is fundamentally at issue is "CIELAB value": the recitation "wherein the change in  $b^*$  is less than or equal to 0.2" is related to the recitation "CIELAB value", but the

recitation "wherein the change in  $b^*$  is less than or equal to 0.2" is indefinite because of the recitation "CIELAB value".

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

US Pat. No. 5,275,854	MAIER et al.	01-1994
US Pat. No. 6,043,194	SAITO et al.	03-2000
US Pat. No. 5,059,579	HART et al.	10-1991
US Pat. No. 5,100,862	HARRISON et al.	03-1992

*Hawley's Condensed Chemical Dictionary*, 1997, John Wiley & Sons, Inc., Thirteenth Edition, page 18.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

Claims 1, 21 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention.

The recitation "after one week exposure to UV light of 50 Klux" renders claims 1, 21 and 42 indefinite because the scope of the claim cannot be ascertained since the recitation "after one week exposure to UV light of 50 Klux" is a conditional limitation: the claim recites that the

change in  $b^*$  value is less than or equal to 0.2 “after one week exposure to UV light of 50 Klux”, but does not require that the article has been exposed to UV light of 50 Klux over a period of one week, so the exact nature of the claimed final product (whether or not it must have “one week exposure to UV light of 50 Klux”) before the product is in its final form (and consequently whether or not it must have a change in  $b^*$  value), cannot be ascertained.

In further regard to claims 1, 21 and 42, the use of “CIELAB value” in the claims renders the claims indefinite since CIELAB is a tradename or standard. Since standards, and computer programs associated with trademarks and tradenames, may change with time, the specification must specify the nature of the  $b^*$  value and the particular standard that defines the  $b^*$  value.

***Claim Rejections - 35 USC § 102***

Claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Maier et al.

In regard to claims 1, 2, 5, 7, 17, 21, 22, 24-26, 36 and 39, Maier et al. teach a shaped article such as a film, sheet, bottle (a container), tube, fiber or rod having a continuous first polymer phase having dispersed therein microbeads of a crosslinked second polymer that are bordered by void space (col. 1, lines 15-19 and col. 7, line 1). Maier et al. teach that acrylic acid, methyl acrylate or methyl methacrylate is a typical monomer for making the crosslinked second polymer for making the microbeads (col. 7, lines 47-52 and Examples 15-18 and 23-26 and col. 17, lines 35-45); the monomers from which the second polymer is derived, acrylic acid, methyl acrylate or methyl methacrylate, therefore, comprise less than 10 wt% styrenic monomers and less than one wt% styrenic monomers as claimed in claims 2 and 22 (i.e. 0 wt% styrenic monomers). Note that acrylic acid, methyl acrylate and methyl methacrylate are acrylic

monomers (and that methyl methacrylate is a methacrylic monomer in regard to claim 24), as acrylates are polymers of acrylic acid or its esters, as evidenced by *Hawley's Condensed Chemical Dictionary*. The compositions taught by Maier et al. have superior thermal stability (col. 3, lines 9-11). In regard to the recitation of claim 21 that the microbeads are made from acrylic crosslinking monomers, Maier et al. teach that the microbeads are made from methyl methacrylate monomers (col. 7, lines 47-49 and Examples 15-18 and 23-26 and col. 17, lines 35-45), which are acrylic crosslinking monomers. The recitation "experiencing a 2% weight loss above 270°C" defines thermally stable as experiencing a weight loss of less than 2% at temperatures below 270°C; since Maier et al. teach the shaped article comprising the microbeads as claimed by Appellant having the same composition as that claimed by Appellant, and since Maier et al. teach that the compositions taught by Maier et al. have superior thermal stability (col. 3, lines 9-11), the microbeads of Maier et al. are necessarily thermally stable as Appellant has defined thermally stable. Maier et al. teach that the article is "virtually free" of the "yellowing with time" problem that "plagues cellulose-based papers" (col. 5, line 67-col. 6, line 2); therefore, the microbeads of Maier et al. have a change in CIELAB value b\* of less than 0.2 towards yellowness after one week exposure to UV light of 50 Klux because Maier et al. teach that the article is "virtually free" of the "yellowing with time" problem that "plagues cellulose-based papers" (col. 5, line 67-col. 6, line 2).

In regard to claims 9-12 and 28-31, Maier et al. teach that the microbeads have a size of about 0.1-50 micrometers, that the microbeads are present in an amount of about 5-50% by weight based on the weight of the first polymer and that the voids occupy about 2-60% by volume of the shaped article (col. 4, lines 60-65).

In regard to claims 13 and 32, Maier et al. teach that the polymeric microbeads are coated with a slip agent (col. 12, lines 51-53).

In regard to claims 14-16 and 33-35, Maier et al. teach that the first polymer is a polyester (col. 6, lines 12-17) or a polyolefin such as polypropylene (col. 6, lines 52-53). Maier et al. teach that poly(ethylene terephthalate), which may be modified by small amounts of other monomers, is especially preferred as the first polymer (col. 6, lines 44-46).

***Claim Rejections - 35 USC § 103***

Claims 18, 19, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maier et al.

Maier et al. teach that methyl methacrylate is a preferred monomer for making the crosslinked polymer (col. 7, lines 47-55) and that the crosslinked polymer is crosslinked using a crosslinking agent (col. 7, lines 1-2 and 43-46). Maier et al. fail to explicitly teach that the second polymer is derived from monomers comprising more than 20 wt% of crosslinking monomer. Maier et al. further disclose that the polymer of the microbeads is crosslinked to the extent of having a resiliency or elasticity at orientation temperatures of the matrix polymer such that a generally spherical shape of the crosslinked polymer is maintained after orientation of the matrix polymer (col. 4, line 68-col. 5, line 4 and col. 13, lines 21-37). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the concentration of the crosslinking agent (i.e the crosslinking monomer as claimed) of Maier et al. in order to achieve the optimal resiliency or elasticity at orientation temperatures of the matrix polymer depending on the monomer used as the monomer from which the second polymer is

derived and depending on the particular desired end user-result, in the absence of unexpected results. MPEP 2144.05 II.B.

Claims 8 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maier et al. in view of Saito et al.

Maier et al. teach the article as discussed above. Maier et al. fail to teach that the microbeads comprise a copolymer derived from methylmethacrylate and 1,6-hexanediol diacrylate or from methylmethacrylate and trimethylol propane triacrylate. Saito et al., however, disclose a transfer sheet having a thermally transferable protective layer (item 12, Figures 1-3) and optionally a protective layer (item 12a, Figure 3) having an acrylic resin to improve the fastness properties, such as rubbing fastness and scratch fastness, of the protective layer/s (col. 7, lines 17-27). Saito et al. disclose that methylmethacrylate, 1,6-hexanediol diacrylate and trimethylol propane triacrylate are suitable acrylic monomers (col. 7, lines 44-46 and col. 8, lines 25-26 and lines 34-35). Saito et al. disclose the use of the disclosed acrylic monomers as a mixture of two or more of the monomers; therefore, Saito et al. disclose the use of copolymers derived from methylmethacrylate and 1,6-hexanediol diacrylate or from methylmethacrylate and trimethylol propane triacrylate. Therefore, one of ordinary skill in the art would have recognized to have used a copolymer of methylmethacrylate and 1,6-hexanediol diacrylate or of methylmethacrylate and trimethylol propane triacrylate as the acrylic polymer of Maier et al. in order to improve the fastness properties, such as rubbing fastness and scratch fastness, of the article of Maier et al. as taught by Saito et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a copolymer of methylmethacrylate and 1,6-hexanediol diacrylate or of



methylmethacrylate and trimethylol propane triacrylate as the acrylic polymer of Maier et al. in order to improve the fastness properties, such as rubbing fastness and scratch fastness, of the article of Maier et al. as taught by Saito et al.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maier et al. in view of Hart et al.

Maier et al. teach the article as discussed above. Maier et al. fail to teach that the shaped article is coated with a slip agent comprising silica or alumina. Hart et al., however, disclose a thermal transfer printing receiver sheet (col. 3, lines 6-7) that is coated with a coating that contains a silica slip agent to improve the slip, anti-blocking and general handling characteristics of the sheet (col. 9, lines 37-51). Therefore, one of ordinary skill in the art would have recognized to have coated the article with a slip agent in order to improve the slip, anti-blocking and general handling characteristics of the article as taught by Hart et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have coated the article with a slip agent in order to improve the slip, anti-blocking and general handling characteristics of the article as taught by Hart et al.

Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maier et al. in view of Harrison et al.

In regard to claim 42, Maier et al. teach a sheet having a continuous first polymer phase having dispersed therein microbeads of a crosslinked second polymer that are bordered by void space (col. 1, lines 15-19 and col. 7, line 1). Maier et al. teach that acrylic acid, methyl acrylate or methyl methacrylate is a typical monomer for making the crosslinked second polymer for making the microbeads (col. 7, lines 47-52 and Examples 15-18 and 23-26 and col. 17, lines 35-

45); the monomers from which the second polymer is derived, acrylic acid, methyl acrylate or methyl methacrylate, therefore, comprise not more than 10 wt% styrenic monomer (i.e. 0 wt% styrenic monomers). Note that acrylic acid, methyl acrylate and methyl methacrylate are acrylic monomers, as acrylates are polymers of acrylic acid or its esters, as evidenced by *Hawley's Condensed Chemical Dictionary*. The compositions taught by Maier et al. have superior thermal stability (col. 3, lines 9-11). In regard to the recitation that the microbeads are thermally stable meaning that the temperature at which the microbeads experience a 2% weight loss is above 270°C, since Maier et al. teach the sheet comprising the microbeads as claimed by Appellant having the same composition as claimed by Appellant, and since Maier et al. teach that the compositions taught by Maier et al. have superior thermal stability (col. 3, lines 9-11), the microbeads of Maier et al. are necessarily thermally stable where thermally stable means that the temperature at which the microbeads experience a 2% weight loss is above 270°C. Maier et al. teach that the article is "virtually free" of the "yellowing with time" problem that "plagues cellulose-based papers" (col. 5, line 67-col. 6, line 2); therefore, the microbeads of Maier et al. have a change in CIELAB value b\* of less than 0.2 towards yellowness after one week exposure to UV light of 50 Klux because Maier et al. teach that the article is "virtually free" of the "yellowing with time" problem that "plagues cellulose-based papers" (col. 5, line 67-col. 6, line 2).

Maier et al. fail to teach that the sheet is a dye diffusion thermal transfer dye receiving sheet.

Harrison et al. disclose a dye diffusion thermal transfer dye receiving element comprising a support comprising a continuous oriented polymer matrix having dispersed therein microbeads

of a cross-linked polymer which are at least partially bordered by void space (col. 2, lines 23-31). Harrison et al. disclose that the dye-receiving element is shaped in sheet form (col. 9, lines 58-60). Therefore, one of ordinary skill in the art would have recognized to have used the sheet of Maier et al. as a dye diffusion thermal transfer dye receiving sheet since it is well known to use a sheet comprising a continuous polymer matrix having dispersed therein microbeads of a cross-linked polymer which are at least partially bordered by void space such as the sheet of Maier et al. as a dye diffusion thermal transfer dye receiving sheet as taught by Harrison et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the sheet of Maier et al. as a dye diffusion thermal transfer dye receiving sheet since it is well known to use a sheet comprising a continuous polymer matrix having dispersed therein microbeads of a cross-linked polymer which are at least partially bordered by void space such as the sheet of Maier et al. as a dye diffusion thermal transfer dye receiving sheet as taught by Harrison et al.

#### **(10) Response to Argument**

Appellant's arguments presented on pages 4-11 of the Brief regarding the 35 U.S.C. 112, second paragraph, rejection of claims 1, 21 and 42 have been fully considered but are not persuasive.

In response to Appellant's arguments presented on pages 4-7 of the Brief regarding the "after one week exposure to UV light of 50 Klux" recitation, this recitation renders the claims indefinite because the metes and bounds of the subject matter covered by the claim language cannot be ascertained since it cannot be ascertained whether or not Appellant intends to require that the article that is claimed in claims 1, 21 and 42 is exposed to UV light of 50 Klux for a

period of one week, or if the recitation regarding the change in  $b^*$  value “after one week exposure to UV light of 50 Klux” is way of characterizing the claimed final article (by exposing the final article [that has not been exposed to light] to UV light of 50 Klux for one week, and determining the change in  $b^*$  value over the course of the week): since the change in  $b^*$  value towards yellowness occurs as a result of exposure to light, sunlight, or simulated sunlight (as Appellant’s specification and arguments indicate), an article in its final form as claimed that is immediately packaged and shielded from any kind of light would not have any change in  $b^*$  value over a period of time. Therefore, the exact nature of the final product that Appellant intends to recite cannot be ascertained, because an article that is exposed to simulated sunlight for a certain period of time would have a different change in  $b^*$  value than that of an article that was not exposed to any kind of light (for that same period of time), and it is not clear if Appellant requires that the article actually be exposed to UV light of 50 Klux for a period of time of one week.

Appellant urges that Appellants are entitled to be their own lexicographers, but the rejection is not based solely on Appellant’s choice of language and terminology that was used in the claim, but due to the indefiniteness of the claims that results from the language at issue, as discussed in the previous paragraph.

Appellant reproduces claim language from the prior art (pages 5-7 of Brief) and states that “[Appellant’s] terminology is commonly used in claims in the prior art” (page 5 of Brief), but it is unclear how the reproduced claim language shows that the particular language used in the claim language of the instant application “is commonly used”, and it is also unclear how the

the reproduced claim language is related to (or relevant to), the language that is at issue in the rejection of record in the instant application.

In response to Appellant's arguments presented on pages 7-11 of the Brief regarding the "CIELAB value" recitation, this recitation renders the claims indefinite because the metes and bounds of the subject matter covered by the claim language cannot be ascertained since it cannot be ascertained whether or not one of ordinary skill in the art recognizes the  $b^*$  value of "CIELAB color scale" (Appellant's phrase, page 7 of Brief) recited by Appellant as the standard for computing a change "towards yellowness" over a certain period of time, nor can it be ascertained whether Appellant's method of obtaining the "change in CIELAB value  $b^*$ " (claims 1, 21 and 42) of the "CIELAB color scale" is the method that one of ordinary skill in the art would have recognized as the standard method of obtaining the "change in CIELAB value  $b^*$ ", because the particular parameters used by Appellant for obtaining the "change in CIELAB value  $b^*$ " cannot be ascertained (for example, the distance between the 50 Klux UV light source and the article during the exposure, etc...).

Appellant refers to "CIELAB" as a "descriptive standard" that "does not change over time" (sentence bridging pages 7-8 of Brief), but it cannot be ascertained whether or not the CIELAB standard has changed over time: Appellant urges that the "CIELAB" standard "has been readily available to those of ordinary skill in the art since at least 1976" (page 8 of Brief), but Appellant has not shown that the "CIELAB" standard that was available in 1976 has remained unchanged since 1976. It is also unclear whether or not the "CIELAB" standard that was available in 1976 was used by Appellants to determine the change in  $b^*$  value.

Appellant reproduces language from the prior art patent literature (pages 8-10 of Brief) and states that the reproduced language shows that one of ordinary skill in the art would recognize that the “CIELAB color scale” (Appellant’s phrase, page 7 of Brief) recited by Appellant “is a standard which does not change over time”, but it is unclear how the reproduced language shows that the “CIELAB color scale” standard has remained unchanged since 1976. For example, the mere use of “a\*” and “b\*” in U.S. Pat. No. 7,056,634 (issued June 2006) does not show that the a\* and b\* values in U.S. Pat. No. 7,056,634 were obtained via the same method/parameters as the a\* and b\* values disclosed in patents issued in the 1980s and the first half of the 1990s (see pages 8-10 of Brief). Additionally, the use of a\* and b\* values disclosed in patents issued in the 1980s and 1990s does not show that the a\* and b\* values disclosed in patents issued in the 1980s and 1990s were obtained via the same method/parameters outlined in the “CIELAB color scale” “standard” that was “available... since at least 1976” to which Appellant refers (see pages 8-10 of Brief).

Appellant’s arguments presented on pages 11-15 of the Brief regarding the 35 U.S.C. 102 rejection of claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39 as being anticipated by Maier et al. have been fully considered but are not persuasive.

As made of record in the rejection of record, Maier et al. teach the compositional limitations claimed in independent claims 1 and 21. While Maier et al. do not explicitly state that the microbeads of Maier et al. “are thermally stable, experiencing a 2% weight loss above 270°C”, Maier et al. do explicitly teach that the compositions taught by Maier et al. have superior thermal stability (col. 3, lines 9-11). Additionally, while Maier et al. do not explicitly state that the microbeads of Maier et al. have a change in CIELAB value b\* of less than 0.2

towards yellowness after one week exposure to UV light of 50 Klux, Maier et al. do explicitly teach that the article is “virtually free” of the “yellowing with time” problem that “plagues cellulose-based papers” (col. 5, line 67-col. 6, line 2). Since Maier et al. teach the shaped article comprising the microbeads as claimed by Appellant having the same composition as that claimed by Appellant, and since Maier et al. teach that the compositions taught by Maier et al. have superior thermal stability (col. 3, lines 9-11), the microbeads of Maier et al. are necessarily thermally stable as Appellant has defined thermally stable (the recitation “experiencing a 2% weight loss above 270°C” defines thermally stable as experiencing a weight loss of less than 2% at temperatures below 270°C; see arguments in Brief and claim language). Furthermore, the microbeads of Maier et al. have a change in CIELAB value  $b^*$  of less than 0.2 towards yellowness after one week exposure to UV light of 50 Klux because Maier et al. teach that the article is “virtually free” of the “yellowing with time” problem that “plagues cellulose-based papers” (col. 5, line 67-col. 6, line 2). Since all of the claim limitations are taught by Maier et al., explicitly or inherently, as discussed above, Maier et al. anticipates claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39.

Appellant has provided Tables AF-1 and AF-2 on pages 13 and 14 of the Brief, and has argued (pages 13-15 of the Brief) that the data shown in these tables show that Maier et al. does not anticipate the claims identified by the Office, but Appellant has not explained how the data shown in these tables show that Maier et al. does not anticipate the claims. Neither of the samples listed in Table AF-1 address the rejection of record because the rejection of record does not rely upon divinyl benzene as a component of the microbeads. See rejection of record. However, if the Office had relied upon divinyl benzene as a component of the microbeads, the

second sample listed in Table AF-1, would have supported the position of the Office (the second sample listed in Table AF-1 falls within the scope of claims 1 and 21 and has a change in CIELAB value  $b^*$  of 0.15 [which is less than 0.2]), so this embodiment of Maier et al. (which is not relied upon in the rejection of record) anticipates the claims as shown by Appellant in Table AF-1.

Furthermore, Appellant's identification of the second sample listed in Table AF-1 as being within the scope of the claims of the instant application (the "Invention" column heading, Table AF-1) and also as being taught by Maier et al. (pages 13-14 of Brief) is effectively an admission that Maier et al. anticipates the claims: Appellant has indicated in Table AF-1 that an embodiment of Maier et al. (the second sample in Table AF-1) falls within the scope of the invention of the instant application.

Furthermore, Appellant's reliance upon samples that comprise divinyl benzene are not relevant to Appellant's claimed invention because Appellant's independent claims specify the composition (i.e., particular "monomers") that the second polymer is "derived" from, and divinyl benzene does not fall within the scope of the composition ("monomers" as claimed) that the second polymer is "derived" from. Note that some of the dependent claims further specify the monomers recited in the independent claims, and none of these claims recite divinyl benzene.

None of the samples listed in Table AF-2 address the rejection of record because the rejection of record does not rely upon allyl methacrylate, divinyl benzene or diallyl maleate as a component of the microbeads. The data shown in Table AF-2 does not supercede the fact that the embodiments of Maier et al. that are relied upon in the rejection of record anticipate the claims (as discussed above) or the fact that Appellant has effectively admitted on pages 13-14 of the



Brief that Maier et al. anticipates the claims by identifying the second sample listed in Table AF-1 as being within the scope of the claims of the instant application ("Invention", Table AF-1) and also as being taught by Maier et al.

Appellant's arguments presented on pages 15-21 of the Brief regarding the 35 U.S.C. 103 rejection of claims 18, 19, 37 and 38 as obvious over Maier et al. have been fully considered but are not persuasive.

Appellant argues that "the same trend [of a decrease in thermal stability with a decrease in amount of crosslinking monomer] holds true for methacrylic, acrylic or styrenic crosslink monomers" because the table on page 18 of the Brief shows this trend for divinyl benzene and for other crosslinking monomers that are not methacrylic, acrylic or styrenic (pages 23-24 of specification). Appellant has not shown that a decrease in thermal stability results with a decrease in amount of crosslinking monomer in the case of methacrylic, acrylic or styrenic crosslink monomers because Appellant has not provided data for methacrylic, acrylic or styrenic crosslink monomers that shows that this is true. Regardless, the data presented in the table on page 18 of the Brief does not address the rejection of record because the rejection of record does not rely upon divinyl benzene as a component of the microbeads. The data presented in Table AF-1 does not address the rejection of record because the rejection of record does not rely upon divinyl benzene as a component of the microbeads. See rejection of record.

Appellant's rephrasing of a previous statement made on the record that indicated Appellant's arguments were based on speculation (this rephrasing is in the paragraph bridging pages 19 and 20 of the Brief) further supports the position of the Office that Appellant's arguments are based on speculation. Part of Appellant's rephrasing is "... once at least two data

points of data have been generated, establishing a line, to indicate that a particular combination of materials will work...”; however, one of ordinary skill in the art recognizes that two data points do not conclusively establish a linear relationship between the independent and dependent variables on a two dimensional graph. Appellant has not provided any collection of data that “establish[es] a line”. One of ordinary skill in the art recognizes that an extrapolation can be conclusively made only after a linear relationship between a sufficient number of data points (more than two) has been established. Regardless, the data presented in Table AF-1 does not address the rejection of record because the rejection of record does not rely upon divinyl benzene as a component of the microbeads.

Appellant’s arguments regarding compositions comprising polystyrene (pages 20-21 of Brief) do not address the rejection of record because the rejection of record does not rely upon polystyrene as a component of the microbeads. See rejection of record.

Appellant’s arguments presented on pages 22-25 of the Brief regarding the 35 U.S.C. 103 rejection of claims 8 and 27 as obvious over Maier et al. in view of Saito et al. have been fully considered but are not persuasive. Appellant’s arguments here depend upon Appellant’s arguments regarding the 35 U.S.C. 102 rejection of claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39 as being anticipated by Maier et al., which have been addressed above.

Appellant’s arguments presented on pages 25-28 of the Brief regarding the 35 U.S.C. 103 rejection of claim 40 as obvious over Maier et al. in view of Hart et al. have been fully considered but are not persuasive. Appellant’s arguments here depend upon Appellant’s arguments regarding the 35 U.S.C. 102 rejection of claim 1 (and 39) as being anticipated by Maier et al., which have been addressed above.

Appellant's arguments presented on pages 28-32 of the Brief regarding the 35 U.S.C. 103 rejection of claims 42 and 43 as obvious over Maier et al. in view of Harrison et al. have been fully considered but are not persuasive. Appellant's arguments here depend upon Appellant's arguments regarding the 35 U.S.C. 102 rejection of claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39 as being anticipated by Maier et al., which have been addressed above.

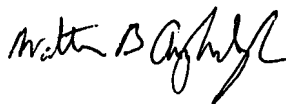
**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Walter B. Aughenbaugh



November 9, 2007

Conferees:

  
Rena Dye, SPE 1794  
Romulo Delmendo, Appeals Specialist, TC 1700